UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

BHC PACIFIC GATEWAY HOSPITAL

Employer

and **Case 36-RC-6071**

OREGON FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL NO. 5017, AFT, AFL-CIO[1]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

> All regular full-time, part-time, and per diem (who average four or more hours per week in a calendar quarter) professional employees, including registered nurses, mental health therapists (who possess a bachelor's degree or higher), chemical dependency counselors, pharmacists, recreational therapists, case managers, and assessment and referral specialists, employed by the Employer at its 1345 Southeast Harney, Portland, Oregon, facility; but excluding all physicians, director of utilization review, confidential employees, guards and supervisors as defined by the Act, and all other employees.

---

[1] The name of Petitioner appears as corrected at hearing.
[2] The parties filed briefs, which have been considered.

The Employer is engaged in the operation of a psychiatric hospital in Portland, Oregon. By its petition as amended at hearing, Petitioner seeks a unit including all professional employees employed by the Employer. The Employer contends that shift supervisors and charge nurses are statutory supervisors; this is the only issue litigated.

The Employer's facility is licensed for 66 beds in three units: adult, adolescent, and intensive care (ICU). The facility provides psychiatric and chemical dependency (detox) treatment; the average patient stay is about one week. The facility does not offer medical care for medically unstable patients, such as those with untreated diabetes, acute cardiac disease, or pneumonia. While State law requires that a registered nurse (RN) be present in the facility at all times, the Employer staffs an RN on each of the three units at all times. "Professional employees" include RNs, mental health therapists (MHTs), chemical dependency counselors, pharmacists, recreational therapists, case managers, and assessment and referral specialists.[3] All employees whose supervisory status is at issue herein are RNs. The parties stipulated that Nancy Hartzell, director of nursing; Anne Jacobs, director of pharmacy; Alicia Dillavou, director of recreational therapy; Sharon Huffman, director of assessment and referral; and JoEllen Lee, director of social work, are statutory supervisors. That stipulation is accepted; they are hereby excluded from the Unit.

Employees who work in the units work on three shifts. Day shift is 7:00 am to 3:30 pm; evening shift is 3:00 p.m. to 11:30 p.m.; night shift is 11:00 p.m. to 7:30 a.m. Each unit has approximately 20 beds. During the day and evening shifts, RNs and MHTs are assigned to each unit; during the night shifts, RNs, MHTs, and certified nursing assistants (CNAs). The record is silent as to the assignments of professional employees other than RNs and MHTs. There are two LPNs employed: one works in utilization review, the other works only on weekends, apparently in one of the care units.

The employer's chief witness was Nancy Hartzell, who had been director of nursing since April 26, 2001,[4] about 10 days as of the start of the hearing. She was previously employed by the Employer as evening shift supervisor, but she was never a full-time shift supervisor. Rather, she worked as evening supervisor on shifts when the full-time supervisor was not present. She was hired by the Employer in December 2000. At the time of the hearing there were no patients in the hospital, as the hospital was undergoing procedures to correct deficiencies with respect to various regulatory bodies, including additional training and revision of forms and handbooks. The number of patients had dwindled over the 30-day period prior to the hearing, and Hartzell predicted that patients would again be admitted within a few days. Thus, Hartzell's experience as director of nursing in the facility was severely limited, and her testimony was primarily based on her experience as part-time evening shift supervisor, and on her earlier experience as a charge nurse on the evening shift in the adult unit. Her total length of service with the Employer was about five months as of the hearing.

The shift supervisors at issue in the hearing were Kathy Wickerham, evening and weekend supervisor, and John Ancharski, night supervisor, as well as 15 named charge nurses, which apparently includes all of the RNs employed in the facility. In addition, Darlene Seufert is relief supervisor on the night shift, when Ancharski is absent. There is a vacant weekend supervisor position. Charge nurses in the units are subordinate to the shift supervisor.

---

[3] There is at least one physician employed by the hospital. The parties stipulated that physicians are excluded from the unit.

[4] The hearing was held on May 7, 8, and 9, 2001.

Ancharski also testified on behalf of the Employer. He identified himself as the *charge nurse* on the night shift in the adult unit, and denied that he had any authority over the other units. His wife, Pat Ancharski, is the night charge nurse on the adolescent unit, and the two of them work the same schedule as to days on and off. He said that because the Employer has a policy forbidding a supervisor from supervising a spouse, when he and his wife were hired, they were told that since they and the ICU charge nurse all had in excess of 20 years' experience, it was unnecessary to have a night shift supervisor. Hartzell testified that she had no knowledge of how it came to be that both Ancharskis work the same shift.

Talley Cox is the staffing scheduling coordinator. He prepares the schedules, and evaluates the number of staff needed, then prepares a staffing list for each shift. There is a staffing grid (not in evidence) which is a formula used to determine patient-to-staff ratio, based on patient census and acuity. Supervisors on the evening and night shifts are expected to follow the grid in determining whether additional staff will be needed for the next shift. Patients may be admitted during any of the three shifts, and are usually discharged during the evening shift. Cox generally schedules more staff than might strictly be needed for a shift; the responsible person on a shift is then expected to assess the needs for the next shift according to the grid, and "call off" the excess staff.

Hartzell testified that in her experience if circumstances changed during her shift--that is, if the patient census rose, or a patient needed one-to-one care, or a staff member became ill--she could call in more staff. It does not appear that this circumstance arose very often. She could also call off staff for the next shift, if it appeared that there would not be a need for everyone scheduled. In calling off staff, it is the Employer's policy to first cut agency personnel, then per diem, then part-time, and finally full-time last. On occasion, when the need arose, she moved staff from one unit to another for part of a shift. She testified affirmatively that there were occasions when she required someone to work overtime, but did not testify as to any specifics.

The Employer has a policy of offering a bonus to an employee who is willing to work an additional shift as needed. The standard bonus is $50.00 to $75.00. When Hartzell was shift supervisor, if an employee asked for $100.00, she would call the her superior for approval.

Hartzell said that a charge nurse can recommend that additional staff be called in, and that on those occasions, as evening supervisor she always questioned the charge nurse as to the reason for the need. When possible, she would help out in the unit herself, or pull someone off another unit, rather than calling in an additional person. She said that additional staff was not called in unless a designated person had been placed on call, which did not happen very often.

Staffing on each unit varies from a minimum of two--which would be an RN and an MHT during the day and evening shifts, and an RN and a CNA during the night shift--up to four or five per unit. The level of staffing depends on patient census, acuity, special needs such as one-to-one care, or seclusion and restraints. Ancharski testified that each day he is given a staffing sheet which covers a 24-hour period, and that if, according to the staffing grid, too many people are scheduled for the next shift, he is expected to call off some people.

Hartzell said that when she was a shift supervisor, there were a few occasions when a nurse who was scheduled did not show up. She said that she first asked for volunteers to stay over, and if there were no volunteers, she simply worked the shift herself. The record does not reveal whether this occurred on Hartzell's regular shift, or if it was for the succeeding shift. She said that she had authority to require someone to come in to work, because there is a requirement

that an RN be present. However, she gave no specific examples of having done this, nor did she say how often it had happened, or how the individual would be selected.

Hartzell described her daily duties as evening supervisor. Typically, upon arrival at the facility, she met with Cox to pick up the "staffing board" for her shift and the next, and discuss any issues that might exist. She did not specify the nature of such issues. She would then walk through each of the three units. At some point, she would visit with the director of clinical services (DCS), Margaret Edwards,[5] to discuss matters such as staffing issues, incident reports, quality concerns, memos to be distributed. She also met briefly with Michelle Egger, the CEO. During the evening, she helped with discharges and admissions, and filled in for RNs while they were on their meal breaks. Otherwise, she handled paperwork. As shift supervisor, she was responsible for the "supervisor" keys, i.e, the keys to the pharmacy and other areas which are normally kept locked during the evening, night, and weekend shifts.

Hartzell testified that as evening supervisor, "unusual circumstances" were reported to her, such as a patient becoming medically unstable and requiring outside medical intervention, or a patient becoming increasingly difficult to control and needing seclusion and restraint. She said that the staff is typically very good; and that they might "double check" with her when patients were becoming more aggressive and acting out as to what she thought about the situation or if she thought more medication was needed, or similar patient-care issues. Hartzell testified that the staff on the evening shift did not require regular day-to-day direction as to their duties, but rather were well-informed as to what was expected of them.

She said that incident reports are used to record violations of facility policy, events which could cause harm to a patient, such as missed medication, a fall, and so on. Such reports were directed to the DCS, who would then give them to a supervisor to investigate as to what happened, why it happened, and what should be done to address the problem.

Most of the shifts have a designated charge nurse. If that person is absent, another RN fills in. Charge nurse designations are generally made by Cox in preparing the schedule. On occasion, two RNs on a unit have agreed among themselves who would be "charge" on that shift. Some RNS are always charge when on duty; i.e, Joan Dernbach, Rose Edmondson, Carol Ellis, Karlita Lisle, Darlene Seufert, Cindy Sowell, and Pat and John Ancharski. Others sometimes work as staff nurse; i.e., Julia Correa, Loren Kelly, Anna Marchese, Wendy Olson, Edith Roberts, Sara Roth, Jackie Schram, and Cecil Smith.

Initially in her employment with the Employer, Hartzell was charge nurse on the evening shift in the adult unit. There were normally two RNs on duty in the unit, and the patients were divided equally between the two of them. As charge, she kept an overall eye on things, making sure that vital signs were taken and patient rounds were made. Hourly rounds were usually assigned to MHTs. There were two MHTs on a shift. As charge, she assigned one to do the relapse prevention group session, and the other to do the community meeting, but the MHTs could trade off among themselves. As charge, she could allow staff to leave early on request; she could also refuse such permission if the patient census/acuity was such that the "grid" dictated that the person was needed.

On the units, RNs are responsible for medications and monitoring any medical issues. MHTs do group therapy and one-on-one interventions. They escort patients for smoke breaks and meal breaks. They sometimes take vital signs, if the RNs are too busy. They also do hourly

[5] Edwards, Hartzell's predecessor, had a broader range of authority than does Hartzell.

checks on patients. RNs do admissions and discharges and monitor patients. They handle substantial paperwork, including receiving orders from doctors, filling out care plans, collecting medications from the pharmacy, and securing personal items belonging to patients.

The charge nurse is responsible for the carrying out of patient treatment plans, which she can change. There is no specific evidence in the record regarding who is involved in preparing patient treatment plans initially. The charge nurse can change the plan when a particular part of it has been met.

Hartzell said that she has never read any guidelines the Employer may have for supervisors regarding attendance policies, disciplinary policies, grievance procedures, or pay disputes. She said that when she was first hired she attended an orientation with various other new employees, and the group was told that any concerns or complaints should be addressed to the human resources department. As a charge nurse and later as a shift supervisor she was never told that she was expected to enforce the Employer's policies with regard to arriving at work on time, returning promptly from lunch breaks, and so on.

Hartzell testified that she preferred verbal counseling to written reprimands. There is no evidence that the Employer has any progressive disciplinary policy, nor any evidence that any record is kept of verbal counseling. Ancharski testified that he has no authority to discipline employees. Hartzell testified that she recalled one occasion on which she resolved a conflict between two RNs. She said that she believes the Employer has a written grievance procedure for employees, but she has never seen it.

Ancharski testified that in the past, he had been given employee performance evaluation forms by Edwards, who told him to have the employees fill them out and then return them to her. There are in evidence two employee evaluation forms, one for an RN, one for an MHT, which bear Ancharski's signature as "supervisor". Ancharski said that the employees themselves filled out the evaluations and that he made no independent assessment of them. There is no indication on either that Ancharski made any recommendation for a wage increase or any other personnel action in connection with the evaluations. Hartzell testified that employees are given annual raises ranging from 3% to 5%, based on the evaluations. However, there is no specific evidence with respect to who determines the amount of raise an employee will receive, or how the amount is determined. Hartzell testified that it is her intention to do performance reviews herself.

John Ancharski testified that there are usually six to eight employees working on the night shift: he and one CNA or one MHT on the adult unit; an RN and two other people on the adolescent unit; and an RN and one or two MHTs in ICU. He said that he never makes rounds of the other units on the night shift. He said that no announcement was ever made to the units on night shift that he was shift supervisor.

As director of nursing, Hartzell is typically present in the facility from about 7:30 a.m. to about 7:15 p.m. currently. During the evening and night shifts, the director of nursing is available by telephone if any serious incident occurs. She said that in the past Edwards made it a practice to call in from time to time to see how things were going.

The Employer's Contentions.

The Employer contends that its shift supervisors are statutory supervisors in that they:

> direct the LPNs, MHTs and CNAs in the proper dispensing of medication, regularly serve as the highest ranking employees in the building, seek additional employees in the event of staffing shortage, move employees between units as needed, adjust grievances, open or close areas of the hospital, counsel employees, handle emergencies, authorize new admissions, handle investigations, draft the supervisor report, authorize overtime, and are responsible for the 'supervisor' keys.

At hearing, the Employer contended that Kathy Wickerham, John Ancharski, and Darlene Seufert were shift supervisors. On brief, the Employer added Pat Ancharski to this list, stating that the Ancharskis and Seufert "cover the Night RN Supervisor position for seven-day coverage." In support of its contention, the Employer argues that a finding of supervisory status would avoid an conflict of interest; cites a number of cases in which the *parties* agreed that similarly situated shift supervisors were statutory supervisors; and argues that if supervisory status is not found, the facility would be "unsupervised" about 75 percent of the time.

Further, the Employer contends that its charge nurses are statutory supervisors because they use independent judgment "in directing less-skilled employees to deliver services in accordance with employer-specified standards, and schedule meal breaks, assess staffing levels and effectively recommend changes thereto, effectively recommend overtime, reassign staff, and provide input on employee performance." In this regard, the Employer relies heavily on the job descriptions in evidence, asserting:

> The Charge RN job description outlines and encompasses all necessary indicia of supervisory status and there is no logical reason to disregard the Charge RN job description because employers have a disincentive to grant supervisory authority to an individual if the individual cannot actually exercise that authority. For example, in the context of unfair labor practice cases, employers are liable for unlawful statements and conduct by their supervisors."

On brief, Employer cites *Schnurmacher Nursing Home,* 214 F.3d 260 (2000)[6]: "Where one must both determine a treatment and ensure that others administer the treatment, it can hardly be said that supervisory authority is not being exercised." However, here there is no evidence that RNs determine any treatment, only very limited evidence that they can change a treatment plan once some part of the plan has been fulfilled. This sounds equivalent to checking off or deleting a completed task from a list. There is no specific evidence as to any activities the RNs engage in to ensure that treatment is administered, other than evidence that they make sure that medication is given at the correct time. There is no evidence that RNs prescribe the medications or the times at which they are to be given, a function normally performed by physicians in health care settings. Nor is there any evidence here that RNs direct other employees to provide administration of oxygen or to deal with life-threatening medical situations, such as the Court found in *Schnurmacher.* Indeed, here, the Employer does not accept or keep patients who are medically unstable.

In addition, the Employer cites, as Board precedent requiring a finding that the shift supervisors are statutory supervisors, *Newton-Wellesley Hospital,* 219 NLRB 699 (1975), and

[6] Denying enforcement of 327 NLRB No. 56, which in turn relied on an unpublished Board denial of review of an unpublished Regional Director decision and direction of election.

Wing Memorial Hospital, 217 NLRB 1015 (1975). In *Newton Wellesley*, the Board found nurse leaders to be statutory supervisors where they had authority to direct overtime work, revise work schedules, transfer personnel from one unit to another on a permanent basis, and effectively recommend hiring and discharge of employees. In *Wing Memorial*, shift supervisors found to be statutory supervisors had authority to discipline personnel. Likewise, in *Westwood Health Center*, 330 NLRB No. 141 (2000), also cited by the Employer, the nurses found to be supervisors had authority to discipline personnel. In other cases cited by the Employer,[7] the parties agreed or otherwise did not contest the supervisory status of shift supervisors. Stipulations by parties in unrelated, as well as Regional Director's decisions, lack precedential value. *Rental Uniform Service*, 330 NLRB No. 44, fn. 10 (2000). In *Ten Broeck Commons*, 320 NLRB 806 (1999), also cited by the Employer as Board precedent here, the supervisory status of the RN nursing supervisors was acknowledged and not at issue; the Board found the LPNs were not supervisors.

Further, the Employer contends that if the shift supervisors are found not to be supervisors within the meaning of the Act, the facility would be without on-site supervision about 75 percent of the time, citing, among other cases, *Pine Manor Nursing Center,* 270 NLRB 1008 (1984). However, in *Providence Alaska Medical Center*, 121 F.3d 548 (9th Cir 1997), the Court, in discussing whether charge nurses were supervisors, said, "That a supervisory nurse is not present during some shifts does not necessarily indicate the charge nurses are supervisors." In *NLRB v. Res-Care, Inc.,* 705 F.2d 1461 (7th Cir. 1983), the Court said that although "on the evening … and night … shifts the licensed practical nurses are the highest-ranking employees on the premises, this does not ipso facto make them supervisors." In *Northcrest Nursing Home,* 313 NLRB 491 (1993), the Board noted that being the highest authority present in a facility is merely a secondary indicia of supervisory status and not dispositive of the issue, in the absence of primary indicia of supervisory status. Indeed, there is no statutory language or case law indicating that there must always be a *statutory* supervisor on duty at all times at an enterprise.

Conclusions.

Section 2(11) of the Act defines a "supervisor" as:

> . . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well-established that Section 2(11) is to be read in the disjunctive, and that possession of any one of the enumerated indicia establishes supervisory status. However, when there is insufficient evidence that the individual possesses any of the primary supervisory indicia, secondary indicia by themselves are insufficient to establish supervisory status. *St. Alphonsus Hospital***,** 261 NLRB 620 (1982); *J.C. Brock Corp.,* 314 NLRB 157 (1994); *Northcrest Nursing Home,* supra. No amount of secondary indicia can establish supervisory status if not one primary indicia is present; secondary indicia in reality are merely "moreovers", or perhaps a silent suggestion to "double check" a conclusion. The burden of establishing supervisory status rests with the party so contending. *Bennett Industries***,** 313 NLRB 1363 (1994). Conclusionary

[7] *Grancare, Inc.*, 170 F.3d 662 (7th Cir. 1999); *North Dade Hospital*, 210 NLRB 558 (1974); *Sherewood enterprises*, 175 NLRB 354, fn. 2 (1969).

testimony without specific supporting evidence does not establish supervisory authority. *Sears, Roebuck & Co*., 304 NLRB 193 (1991).

There is no evidence or contention that the shift supervisors or the charge nurses herein have any authority to hire, fire, suspend, lay off, recall, promote, or discharge employees. There is some evidence with respect to the possibility that the alleged supervisors have authority to assign, reward, transfer, or discipline employees, to responsibly direct them, or to adjust their grievances.

As been said above, the Employer asserts on brief that the individuals at issue herein as shift supervisors are Kathy Wickerham, John Ancharski, Pat Ancharski, and Darlene Seufert. Inasmuch as John Ancharski testified at hearing that he is a charge nurse, not a shift supervisor, the Employer is apparently relying on the testimony of Hartzell with respect to here experience concerning duties and responsibilities of shift supervisors. At hearing, no contention was made, nor any evidence offered, that Pat Ancharski is a shift supervisor. Hartzell described Pat Ancharski as a charge nurse reporting to shift supervisor John Ancharski. John Ancharski denied that he has any supervisory authority over Pat Ancharski, or over the ICU charge nurse on the night shift. The Employer offered no evidence other than bare assertions that John Ancharski is a shift supervisor, while J. Ancharski gave specific testimony about why he was not a shift supervisor and the circumstances regarding how that circumstance came to pass. This testimony was not contradicted by the Employer. Seufert is identified in the record as the charge nurse on the night shift in the ICU unit five days a week. Hartzell testified that Seufert is the relief shift supervisor when John Ancharski is absent. There is no other evidence that Seufert is a shift supervisor. It would appear that since Seufert substitutes only for J. Ancharski, a non-shift-supervisor, that Seufert is a non-shift-supervisor as well. However, one *could* contemplate her holding the title of acting shift supervisor while regularly replacing J. Ancharski.

Thus, the only shift supervisor at issue apparently is Kathy Wickerham, and the only evidence regarding Wickerham's supervisory status is the testimony of Hartzell, who testified as to her own experience as part-time or relief evening shift supervisor and not specifically as to Wickerham's experience as full-time evening shift supervisor. In *Buckley Broadcasting Corp.,* 284 NLRB 1339 (1987), the Board said that " [a]s an evidentiary matter, presumptions should arise when it is believed that proof of one fact renders the inference of the existence of another fact so probable that it is sensible and timesaving to assume the truth of the inferred fact until it is affirmatively disproved." [Fn. omitted.] I shall, therefore, presume that the evidence in the record with respect to Hartzell's experience as shift supervisor applies equally to Wickerham.

Authority to assign. Wickerham does not schedule employees, nor does she assign specific tasks to them. Her duties consist chiefly of "keeping an eye on things", handling paperwork, and being available to fill in for RNs on breaks or otherwise as needed.

Wickerham is provided daily with the staff schedule for the next 24-hour period, and with the staffing grid, the formula used to determine the number of employees required based on patient census and acuity. She is expected to compare the schedule with the formula, and to adjust the staffing for the next shift accordingly. It appears that calling off employees is a regular occurrence, and there is an established policy as to the order in which employees are called off. It also appears that in the event that more employees are going to be required (according to the grid) than called for on the schedule, it is a regular practice to ask an employee to work the next shift on overtime. The Employer has a bonus system in place to encourage employees to accept such requests. This would indicate that working an extra shift is non-mandatory. There is no specific evidence that any employees are ever actually called in to work an unscheduled shift; likewise,

there is no evidence that Wickerham ever makes decisions to call in, call off, or ask employees to work an overtime shift except in strict accordance with the staffing grid, nor any evidence that such decisions are ever based on anything other than the staffing grid. Thus, no independent judgment is involved. There is no evidence that she "authorizes" overtime in any other circumstances.

There is no evidence that Wickerham has any authority to order an otherwise unscheduled employee to come in to work, or to order any employee to work an overtime shift. Indeed, the Employer offers a bonus to employees as an inducement to work an overtime shift. In *Heritage Hall, E.P.I. Corporation*, 333 NLRB No. 63 (2001), the Board noted Eighth Circuit language in *Lynwood Health Care Center, Minnesota v. NLRB*, 148 F.3d 1042, 1047 (1998), that "seeking off-duty volunteers to help out when the facility is short handed" is insufficient to confer supervisory status. See also *Providence Hospital*, supra, at 732.

Authority to reward: Wickerham can offer an employee a bonus for working an overtime shift. It is clear from Hartzell's testimony that the offering of a bonus is a routine matter established by Employer policy, and that Wickerham cannot offer more than a set amount without permission from higher authority. Employees are given annual raises amounting to three to five percent, based on their evaluations. However, there is no specific evidence that Wickerham evaluates employees, or that she makes any recommendations or decisions with respect to the amount of raise an employee will receive. Furthermore, Hartzell testified that as director of nursing, it is her intention to perform all future evaluations herself.

Authority to transfer: Hartzell testified that Wickerham has authority to move personnel from one unit to another in circumstances in which a unit needs additional help to deal with a difficult patient. However, there is no specific evidence as to whether Wickerham can *order* an employee to work in another unit, or whether she can only ask for a volunteer. There is no evidence that Wickerham has any authority to permanently transfer employees from one unit to another, or to effectively recommend such transfer, as could the nurse leaders in *Newton-Wellesley Hospital,* 219 NLRB 699 (1975), or to transfer employees to a different shift, as could the nurse found supervisory in *Autumn Leaf Lodge,* 193 NLRB 638 (1971). Moreover, based on this record, it appears that the decision to bring in an employee from another unit to assist is only made when the need for such extra person is obvious. In these types of situations, the Board finds that no independent judgment is required. *Loffland Brothers Company*, 243 NLRB 74, 75, fn. 4 (1979).

Authority to discipline: Hartzell testified that she sometimes verbally counseled employees. There is no evidence that a record was kept of such counseling, or that Hartzell made any recommendations for further discipline. There is no evidence that the Employer has any formal disciplinary procedure, such that verbal counseling is a mandatory first step in a progressive disciplinary system, or that a verbal counseling leads automatically to more severe discipline for a repeat offense.

The Board has found that verbal counseling and even written warnings (of which there is no evidence in the instant case) do not amount to "discipline" within the meaning of Section 2(11) of the Act absent evidence that such reprimands have a significant impact on the employee's employment status or that they impair a reasonably expected employment benefit. *Hydro Conduit Corporation*, 254 NLRB 433 (1981); *Tucson Gas & Electric Company,* 241 NLRB 181, 182 (1979); *Azuza Ranch Market*, 321 NLRB 811 (1996). Here, there is no such indication.

Authority to direct: There is no specific evidence in the record that Wickerham regularly directs the work of other employees. On brief, the Employer asserts that Wickerham directs "the LPNs, MHTs, and CNAs in the proper dispensing of medication," an assertion wholly unsupported by the record, which clearly establishes that the proper dispensation of medication is the responsibility of the charge nurses on the unit. The Board discussed "responsible direction" at some length in *Providence Hospital*, supra. There is no evidence here that Wickerham has any authority to direct employees which exceeds that found to be possessed by the charge nurses (non-supervisory) in that case. An essential factor in finding supervisory status is a finding that the exercise of authority *requires* the use of independent judgment. In *Providence* the Board discusses the tension between exercising independent judgment as a professional employee versus as a statutory supervisor. There is no evidence in the record herein that Wickerham is required to use independent *supervisory* judgment in directing employees. (I make no finding as to whether this record supports a conclusion that Wickerham exercises independent professional judgment vis a vis her "subordinates".)

Authority to adjust grievances: There is no evidence that the Employer has any formal grievance procedure for employees to use. The sole evidence in the record with respect to any "adjustment" of grievances is Hartzell's testimony that on one occasion she resolved a conflict between two RNs. Hartzell also testified that employees are told in orientation to take any complaints or concerns to the human resources department. Limited authority to resolve a "squabble" between employees does not warrant an inference that the individual has statutory authority to adjust grievances, and is insufficient to establish 2(11) authority. In this case there is no indication Hertzell directed a resolution; rather, it would appear she simply mediated a resolution between the two disputants. *St. Francis Medical Center West*, 323 NLRB 1046 (1997).

Wickerham is readily distinguishable from shift supervisors found to be statutory supervisors by the Board and the Courts in other cases. In *Wing Memorial Hospital,* 217 NLRB 1015 (1975), the shift supervisors had authority to discipline personnel. In *Newton-Wellesley Hospital,* 219 NLRB 699 (1975), the nurse leaders had authority to effectively recommend hiring and discharge, and to permanently transfer employees. In *Pine Manor Nursing Center,* 270 NLRB 1008 (1984), the charge nurses has authority to discipline, terminate, and reward employees, or to effectively so recommend. In *Beacon Light Christian Nursing Home*, 825 F.2d 1076 (6th Cir. 1987), the LPNs at issue had authority to discipline employees. In *Autumn Leaf Lodge,* 193 NLRB 638 (1971), the LVN at issue had authority to direct employees, and to effectively recommend discipline and transfers to other shifts. In *Carter Hall Nursing Home*, 165 F.3d 290 (4th Cir. 1999), the LPNs at issue had authority to assign, direct, and transfer employees, and to effectively recommend their suspension and discharge. There is no evidence in this record that Wickerham has any authority comparable to the individuals found supervisory in the cited cases.

Inasmuch as the record evidence fails to establish that Wickerham possesses any of the primary indicia of supervisory status, I conclude that she is not a supervisor within the meaning of Section 2(11) of the Act. Even if I were to conclude that J. Ancharski and Seufert had the equivalent authority of Wickerham--regardless of their titles--I would have to conclude they are not supervisors, for the same or stronger reasons.

The Charge Nurses.

In the absence of a shift supervisor, the charge nurses on the night shift are responsible for comparing the schedule for the next shift with the staffing grid, and making adjustments accordingly, just as Wickerham does. Charge nurses assign tasks to other employees. Tasks to

be assigned include the dispensing of medications, escorting patients for smoke and meal breaks, and handling group sessions with patients. On day and evening shifts, charge nurses divide the dispensing of medications among the RNs in the unit, if there is more than one RN. Escorting patients on breaks is normally assigned to the MHT, or divided among them if more than one is on the unit. Only MHTs lead group sessions, and the charge nurse assigns them to specific sessions. There is no record evidence with respect to the basis on which the charge nurse assigns any of these tasks, other than that dispensing medications is assigned to a nurse, conducting group sessions is assigned to an MHT, and usually escort tasks are assigned to an MHT. This indicates following a set policy, not the use of independent judgment. The charge nurses assign meal breaks to employees, but there is no specific evidence as to the basis for such assignments.

The evidence with respect to the duties and responsibilities of charge nurses is extremely limited in this record. As has been said, with respect to the charge nurses the Employer relies heavily on the job description in evidence. However, job descriptions are merely paper authority and are not given controlling weight by the Board. *Training School at Vineland*, 332 NLRB No. 152 (2000); *Audubon Regional Medical Center,* 331 NLRB No. 42 (2000).

The record is insufficient to establish that the charge nurses are required to use any independent judgment in assigning nurses to patients for purposes of dispensing medications, or otherwise assigning tasks to MHTs or other employees. There is no evidence with respect to the basis on which such decisions are made. Charge nurses' authority with respect to staffing is no different from that Wickerham, and is equally limited by Employer policy. Further, there is no evidence that charge nurses have any authority to discipline employees, or that they possess any other indicia of supervisory authority. Given that the shift supervisors are not statutory supervisors, it follows that their subordinates (charge nurses) are not either. Finally, I do note the odd ratio of supervisors to subordinates that would result if charge nurses were supervisors, and especially so if the shift supervisors were as well.

I conclude, therefore, that the charge nurses are not supervisors within the meaning of the Act.

There are about 62 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by OREGON FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL NO. 5017, AFT, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before June 1st, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 8th, 2001 .

DATED this 25th day of May, 2001.

_____

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

177-8580-8060